No 187

IN THE

Supreme Court of the United States

October Term, 1943.

THE PEOPLE OF THE STATE OF NEW YORK, on the relation of STEPHEN ROGALSKI,

Petitioner,

against

WALTER B. MARTIN, as Warden of Clinton Prison at Dannemora, New York,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF NEW YORK AND BRIEF IN SUPPORT THEREOF.

STEPHEN ROGALSKI,
Petitioner in pro. per.,
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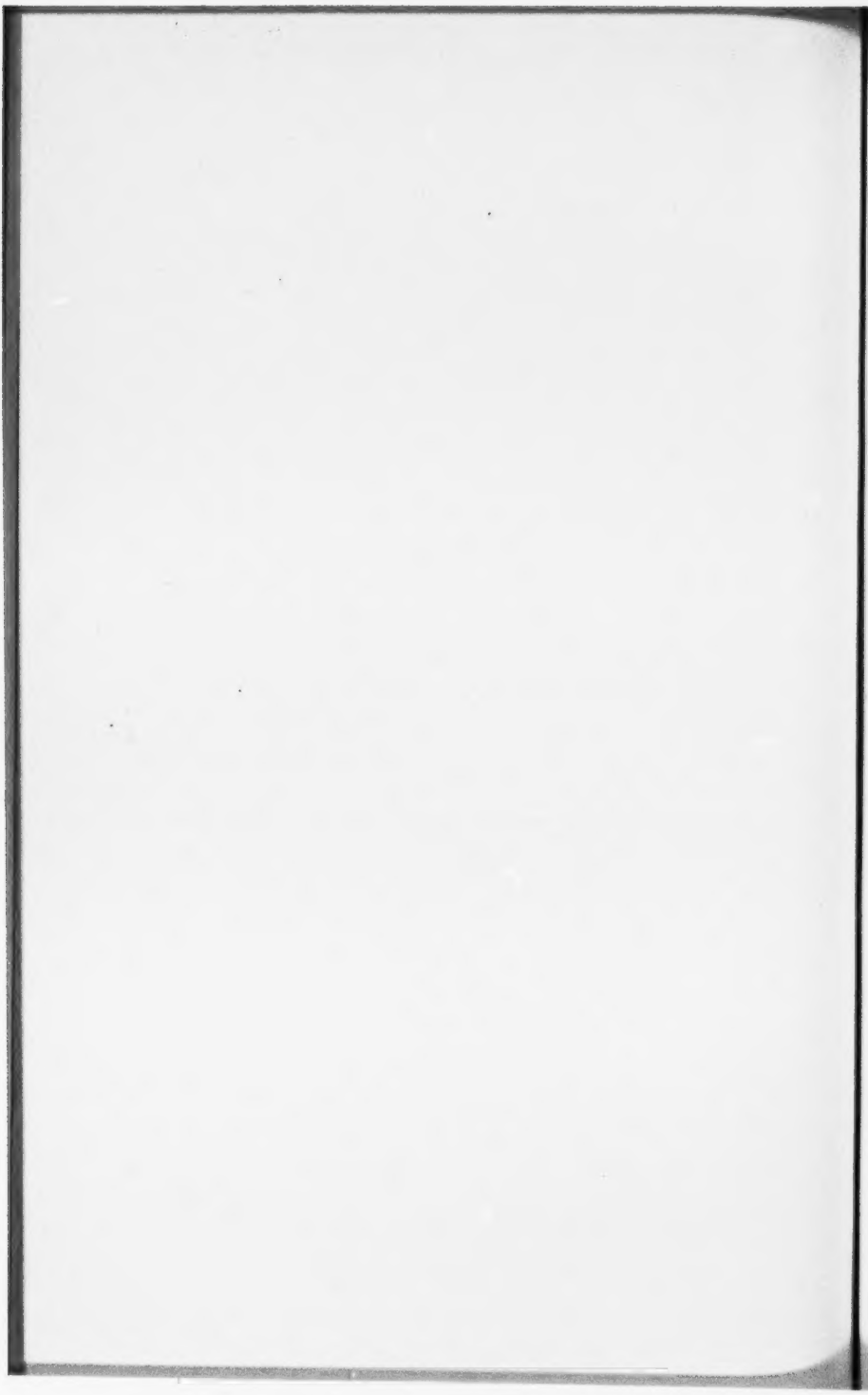

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PETITION FOR WRIT OF CERTIORARI.

To the Honorable, the Chief Justice and Justices of the Supreme Court of the United States:

The petitioner, Stephen Rogalski, respectfully prays for a writ of certiorari to review the order of the Court of Appeals of the State of New York entered in the above case on April 22, 1943.

Statement of the Case.

This was a proceeding upon a writ of habeas corpus in the Supreme Court of the State of New York at Special Term, held in and for the County of Clinton, to inquire into the legality of the detention and imprisonment of the petitioner in Clinton Prison at Dannemora, New York.

The petition for the writ of habeas corpus alleged that the mittimus under which the petitioner is held in said prison, is invalid, illegal and void, in that it is predicated upon a conviction rendered pursuant to *Section 1898-a of the Penal Law of the State of New York, which statute contravenes, violates and is repugnant to the Fourteenth Amendment to the Federal Constitution (R., pp. 7-8; ff. 21-24).

The Special Term dismissed the writ and remanded the petitioner to the custody of the Warden of said prison, without opinion (R., p. 22). The Appellate Division of the New York Supreme Court, Third Judicial Department, affirmed the order of dismissal in a *Per Curiam* opinion (R., pp. 25-26); and the Court of Appeals, the court of last resort of the State of New York, affirmed the order of the Appellate Division, without opinion (R., p. 28).

Reasons for Granting the Writ.

1. In holding that Section 1898-a of the New York Penal Law is constitutionally valid, the said Court of Appeals has decided an important question involving due process of law in a way probably in conflict with applicable decisions of this court. See decisions cited on p. 3 *infra.*

2. In so holding, the said Court of Appeals has decided an important question of constitutional law which has not been, but should be, settled by this Court.

3. There is a confusion in the State Courts upon this question and the public interest will be promoted by the prompt settlement in this Court of the question.

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* A copy of Section 1898-a appears at p. 4 of the brief.

State Court decisions showing such confusion are:

People v. Burt, 258 App. Div. (N. Y.) 896.

People *ex rel.* Dixon v. Lewis, 249 App. Div. (N. Y.) 464.

People *ex rel.* Fry v. Hunt, 29 N. Y. Supp. (2d) 927.

People *ex rel.* Shubert v. Pinder, 9 N. Y. Supp. (2d) 311.

WHEREFORE, it is respectfully submitted that this petition for a writ of certiorari to review the judgment of the Court of Appeals of the State of New York should be granted.

STEPHEN ROGALSKI,
Petitioner in pro. per.,
Box B, Dannemora, N. Y.

PETITIONER'S

BRIEF

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

Jurisdiction.

The order of the Court of Appeals of the State of New York was entered on April 22, 1943.

The jurisdiction of this Court is conferred by the Fourteenth Amendment of the Constitution of the United States and by Section 237 of the Judicial Code, as amended by the Act of February 13, 1925.

Statement.

The statement of the case having been given in the preceding petition, in the interest of brevity that statement is not repeated.

POINT I.

A conviction predicated on Section 1898-A of the New York Penal Law is void, as this statute violates the 14th Amendment to the National Constitution.

The pertinent part of Section 1898-a of the New York Penal Law which is under attack on this appeal reads as follows:

> "§1898-a. Weapons in automobiles; presumption of possession:
>
> The presence in an automobile, other than a public omnibus, of any of the following weapons, instruments or appliances, viz., a pistol, a machine gun, a sub-machine gun, a sawed-off shotgun, a black-jack, a slingshot, billy, sandclub, sandbag, metal knuckles, bludgeon, dagger, dirk, stiletto, bomb or silencer shall be presumptive evidence of its illegal possession by all the persons found in such automobile at the time such weapon, instrument or appliance is found."

The breadth of the presumption in this statute is manifest. The word "presence," as here employed and construed in the instant case (R., pp. 8-9; ff. 24-26), means concealed or otherwise, and the phrase "by each of the persons" means irrespective of knowledge of the presence of such weapon.

Under this construction the statute fixes no reasonable or justifiable standard of criminality, as was so tersely illustrated in People *ex rel.* Dixon v. Lewis, 249 App. Div. (N. Y.) 464, as follows:

> "But to say that one who innocently steps into an automobile may, *ipso facto,* place himself in the criminal class, and subject himself to criminal prosecution, because of the unrelated fact that at some time a pistol had been placed in the car and still remains there, is to assert something that is unreal, and has not the support of reason. If this presumption were sound in law under our constitutional limitations, it is difficult to see why it may not be extended with equal force to every home in the State; as homes, and 'hideouts' of various kinds, have been reduced to their purpose by criminals. The patient on his way to the hospital, or the physician or clergyman being hastily conveyed to the bedside of the sick, may be jeopardizing his legal character. If this presumption be legally effective, one may be convicted of a crime when guilty of no unlawful act, has no guilty knowledge, harbors no evil intent. This result is not within the contemplation of the common law, nor of our Constitution. It amounts to a total disregard of due process of law."

In People *ex rel.* Shubert v. Pinder, reported in 9 N. Y. S. (2nd) 311, the Court said:

> "Under this statute it would be possible to convict the defendant upon proof of facts enumerated in Section 1898-a, and their conviction could be brought about not upon valid proof but merely upon a dictated, made-to-order presumption. The ultimate fact to be established

here is illegal possession of a gun. The fact proven would be merely the legislative presumption. There would be no actual proof. There is no reasonable connection between the presumption and illegal possession sought to be proved. Under the law the body of the crime must be proved; under Section 1898-a possession is not proved but is presumed. The legislature has no power to declare one guilty of a crime; that is the function of the court after due proof."

In the recent case of People *ex rel.* Fry v. Hunt, 29 N. Y. S. (2nd) 927, wherein the authorities were collated, the Court held the statute unconstitutional, sustained the writ and discharged the prisoner from custody (R., pp. 13-15; ff. 37-45).

The constitutionality of the statute was upheld in People v. Burt, (171 Misc (N. Y.) 166, but, as indicated by Mr. Justice Hinkley in the Fry case (*supra*), the opinion there rendered begs the question (see R., p. 15; ff. 44-45).

The Appellate Division of the New York Supreme Court, Second Department, decided that the statute was constitutional in People v. Burt (258 A. D. 896), and that decision was affirmed by the Court of Appeals (283 N. Y. 740) on the ground that "the question of the constitutional validity of the Penal Law, Section 1898-a, is not presented on this record."

It is noteworthy in this connection that, although appeal was available as a matter of law in the Fry case (*supra*), the Attorney General did not prosecute an appeal from that most recent decision on the question.

Various statutory presumptions have been upheld where there is a rational connection between the fact presumed

and the fact proved. But it will be found that such presumptions are declared to arise from possession, actual or constructive, of the condemned thing.

The presumption arising from possession of policy slips illustrates the doctrine of permitted presumptions; New York Penal Law, Sections 974-975. The offense in Section 974 is possession knowingly, and the presumption of Section 975 is merely that possession is possession knowingly. That is to say possession presumes knowledge of the character of the thing possessed.

Adams v. New York, 192 U. S. 585.

Under Section 2414-a of the New York Penal Law, possession of a false weight or measure is presumptive evidence of knowledge that it is a false weight or measure. And under Section 1308 of the New York Penal Law, the receiver (possessor) of stolen goods is presumed to have knowledge that the goods are stolen.

All these and possibly other like presumptions arise where the thing condemned or stolen is shown to be in the possession of a person. He knows the existence of the thing because he has it in his possession. The presumption runs only to his knowledge of unlawful character or unlawful possession.

How different is the rationality of relation in such a statute of the thing possessed, to knowledge of the thing possessed, from that in the statute under consideration, where, without proof of possession, actual or constructive, of the thing condemned, or without proof even of knowledge of the existence of the thing condemned, or its whereabouts, presumption of illegal possession of the thing con-

demned comes from the mere presence in an automobile where the thing condemned is found.

Precisely in point is the opinion rendered by this Court in Bailey v. Alabama, 219 U. S. 219, wherein Mr. Justice Hughes said (pp. 234-235):

> "We are not impressed with the argument that the Supreme Court of Alabama has construed the amendment to mean that the jury is not controlled by the presumption, if unrebutted, and still may find the accused not guilty; * * * it is not sufficient to declare that the statute does not make it the duty of the jury to convict, where there is no other evidence. * * * The point is that, in such a case, the statute *authorizes* the jury to convict, * * * the jury may accept it, and they have the express warrant of the statute to accept it as a basis for their verdict. And it is in this light that the validity of the statute must be determined."

Surely it shocks the conscience and reason to presume an innocent and lawful occupant of an automobile—"a patient on his way to the hospital, or a physician or clergyman being hastily conveyed to the bedside of the sick," or an industrial worker being conveyed to his job under the "share-your-car" program—to be guilty of possession of a dangerous weapon of which he has never seen or heard of and of which he knows nothing, to say nothing of such presumption arising from the mere presence of an innocent person in the automobile.

If this Section 1898-a of the New York Penal Law does not violate the 14th Amendment forbidding the States from enacting laws depriving the citizen of his life, liberty or property, without due process of law, then the 14th Amendment is meaningless, and the citizen has no security in his life, liberty and property.

In Manley v. Georgia (279 U. S. 1) the Court stated as follows:

> "Mere legislative fiat may not take the place of fact in the determination of issues involving life, liberty and property."

As well enact a statute providing that all persons present in an automobile where a manslaughter is committed, by the driver's negligence, are presumed to have committed the manslaughter. Section 1898-a of the New York Penal Law does exactly that thing, except that the offense is not manslaughter but is illegal possession of a dangerous weapon.

In McFarland v. American Sugar Company, 241 U. S. 79, 86, 36 S. Ct. 498, 501, this Court said:

> "It is not within the province of a legislature to declare an individual guilty or presumptively guilty of a crime."

Petitioner submits that this Section 1898-a of the New York Penal Law, which makes all persons in an automobile, no matter for what purpose, or how lacking they are in knowledge of the presence of a pistol, presumptively guilty of a felony for violation of this statute, if a pistol is found anywhere in the automobile, even locked in a compartment or otherwise concealed, is nothing more than a legislative fiat which palpably violates the 14th Amendment to the Federal Constitution.

This Court reviewed a denial of a writ of habeas in Dimmick v. Tompkins, 194 U. S. 540, notwithstanding that a writ of certiorari had been denied to the same petitioner to review the judgment of conviction under which he was

imprisoned. No previous application for a writ of certiorari was made in the case at bar, nor has the constitutional question here at issue ever been submitted to this Court.

Conclusion.

It is respectfully submitted that a writ of certiorari should issue to enable this Court to review the decision of the Court of Appeals of the State of New York.

Respectfully submitted,

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